

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 11-CR-99-GKF
)
 BENJAMIN RYAN SPENCE,)
)
 Defendant.)

DEFENDANT'S SENTENCING MEMORANDUM

Defendant, Benjamin Ryan Spence, respectfully submits the following sentencing memorandum regarding his re-sentencing.

1. Everyone agrees that Mr. Spence is entitled to relief under *Johnson v. United States*, 135 S. Ct. 2551 (2015), as his sentence was enhanced under the residual clause of the Armed Career Criminal Guidelines.
2. In *United States v. Madrid*, 805 F.3d 1204, 1211 (10th Cir. 2015), the Tenth Circuit “held that the residual clause of § 4B1.2(a)(2) is void for vagueness.”
3. In light of *Madrid*, Mr. Spence cannot be resentenced under the prior version of the Guidelines, as they are unconstitutional as relevant here.
4. Effective August 1, 2016, the United States Sentencing Commission promulgated an amendment to U.S.S.G. § 4B1.2 which deleted the residual clause.
5. Accordingly, and as found in a revised Pre-Sentence Report prepared by the U.S. Probation Office, Mr. Spence is no longer an Armed Career Criminal.
6. His revised Guidelines range is now between 27 and 33 months.

7. The revised Pre-Sentence Report was disclosed to counsel for both parties in accordance with LCrR 32.4(a) on July 18, 2016.

8. Objections to the revised Report were accordingly due by August 1, 2016 in accordance with Fed. R. Crim. P. 32(f)(1).

9. Neither party submitted an objection, and the undersigned has confirmed with Mr. Spence, via telephone, that he has no objections to the revised calculations.

10. Mr. Spence is willing to waive his appearance at re-sentencing—in accordance with Fed. R. Crim. P. 43(c)—provided that the Court sentences him within the recalculated Guidelines range, to time served, or to any other sentence that will result in his immediate release.

11. As noted, the undersigned has spoken to Mr. Spence telephonically, and Mr. Spence has indicated that time served is an acceptable sentence to him. He merely wants to be released.

12. Accordingly, Mr. Spence respectfully requests that the Court sentence him to time served, and issue an amended judgment and sentence forthwith so that Mr. Spence may be released from custody. He has already served more time than he should be required to serve under a constitutional sentencing.

Respectfully submitted,

/s/ Ryan A. Ray
Ryan A. Ray, OBA #22281
NORMAN WOHLGEMUTH CHANDLER
JETER BARNETT & RAY, P.C.
401 S. Boston Ave., Suite 2900
Tulsa OK 74103
Telephone: (918) 583-7571
Facsimile: (918) 584-7846
Email: rar@nwclaw.com
ATTORNEY FOR DEFENDANT,
BENJAMIN RYAN SPENCE

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2016, a true and correct copy of the above and foregoing instrument was served via CM-ECF upon the following:

Joel-lyn A. McCormick, Esq.

I further certify that on August 2, 2016, a true and correct copy of the above and foregoing instrument was served via e-mail upon the following:

Ashley Schneeberg
Deputy Chief United States Probation Officer

/s/ Ryan A. Ray
Ryan A. Ray